

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**SHAWN MICHAEL MARTIN,**

Plaintiff,

No. 2:14-cv-02057-AC

v.

OPINION AND ORDER

**V. RODRIGUEZ, et al.,**

Defendants.

**MOSMAN, J.,**

On December 28, 2015, Magistrate Judge John Acosta issued his Findings and Recommendation (F&R) [37], recommending that Defendants' Motion to Dismiss (titled "Defendants' Rule 12(b)(6) Motion to Dismiss and Supporting Memorandum of Law") [12] should be GRANTED IN PART and DENIED IN PART. Judge Acosta recommends that the Motion should be GRANTED to the extent that Plaintiff's claim against Defendant Gilmore should be DISMISSED without prejudice as to Plaintiff's right to pursue the identical claim in an ongoing case and that the remainder of Defendants' Motion should be DENIED. No objections to the Findings and Recommendation were filed.

**DISCUSSION**

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to

make a *de novo* determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, *de novo* or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Acosta's recommendation and I ADOPT the F&R [37] as my own opinion.

IT IS SO ORDERED.

DATED this 25 day of January, 2016.



MICHAEL W. MOSMAN  
United States District Judge